

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

One Ashburton Place: Room 503
Boston, MA 02108
(617) 727-2293

MICHAEL BANAS,

Appellant

v.

**TOWN OF WEST
SPRINGFIELD,**

Respondent

Case No.: G2-13-219

ORDER OF DISMISSAL

On September 26, 2013, the Appellant, Michael Banas, a resident of West Springfield, filed an appeal with the Civil Service Commission (Commission) contesting his non-selection for promotional appointment to the position of Police Captain by the Town of West Springfield (Town).

A pre-hearing conference was scheduled for November 20, 2013 at 9:00 A.M. at the Springfield State Building in Springfield, MA. The notice of pre-hearing stated that the Appellant is required to appear at the pre-hearing even if represented by counsel. Further, the notice stated that the date scheduled for the pre-hearing conference shall be considered the date of commencement of the hearing and that failure to appear, without a showing of good cause, will result in default with allowance of appeal or dismissal of the appeal, as appropriate.

On the day prior to the pre-hearing, the parties forwarded an email to me alluding to a potential settlement agreement. That same day, at 3:52 P.M., I sent an email to both counsel stating that "absent a withdrawal from the Appellant, the case remains on the docket for tomorrow at 9:00 A.M."

On Wednesday, November 20th at 9:00 A.M., after concluding a matter that was on the docket for 8:15 A.M., I called the Banas v. Town of West Springfield case. Counsel for the Town was present, but neither the Appellant nor his counsel were present. Attempts by opposing counsel to reach counsel for the Appellant at that time were unsuccessful.

Since counsel and representatives for the next pre-hearing had arrived early, I proceeded with that matter. At 9:20 A.M., the Appellant and his counsel were still not present. The second attempt to reach counsel for the Appellant by phone was successful and he participated by phone without the Appellant.

Told by the parties that they had reached a tentative settlement agreement that was contingent on the Appellant's promotional appointment in the future, I advised both parties that the Commission does not order a candidate's promotional appointment, nor does the Commission enforce such settlement agreements with the parties. I was advised that the matter would be settled between the parties without the Commission's involvement and that a voluntary withdrawal would be submitted as early as that day.

To date, no voluntarily withdrawal has been submitted. I advised counsel for the Appellant that this matter would be dismissed based on a lack of prosecution.

For these reasons, the Appellant's appeal under Docket No. G2-13-219 is hereby *dismissed*.

Civil Service Commission

Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell and Stein, Commissioners) on December 19, 2013.

A True Record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(1), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision.

Notice to:
Neil Rossman, Esq. (for Appellant)
Simon Brighenti, Esq. (for Respondent)
John Marra, Esq. (HRD)